

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

**In the Matter of the Proposed Adoption
of Amendments to Environmental Rules
for Large Energy Facilities and High
Voltage Transmission Lines, Repeal of
Existing Rules, and Technical
Amendments to Power Plant Siting Rules.**

**COMMENTS OF MINNESOTA
CENTER FOR ENVIRONMENTAL
ADVOCACY, IZAAK WALTON
LEAGUE OF AMERICA, AND
MINNESOTANS FOR AN ENERGY
EFFICIENT ECONOMY.**

**Minnesota Rules Chapter 4410
Minnesota Rules Chapter 4400**

OAH Docket No. 6-2901-15394-1

The Minnesota Center for Environmental Advocacy is a private, non-profit organization founded in 1974 with the mission to use law, science, and research to protect Minnesota's natural resources and the health of its people. The Izaak Walton League of America is a diverse group of 50,000 men and women dedicated to protecting the nation's soil, air, woods, waters, and wildlife. Minnesotans for an Energy Efficient Economy is a nonprofit organization leading the transition to a clean, efficient, and fair energy system.

The Minnesota Center for Environmental Advocacy, Izaak Walton League of America, and Minnesotans for an Energy Efficient Economy (hereinafter "MCEA") recognize and appreciate the efforts of the Environmental Quality Board ("EQB") staff in preparing and revising the proposed amendments. MCEA generally supports adoption of the amended rules including the EQB staff recommendations for changes in the proposed rules dated August 25, 2003.¹ There are two rules, however, that require clarification and modification to protect public participation and ensure the adequacy of environmental review.

I. Modification of Notice Requirement That Relies on Public Utilities Commission Rules.

In its August 25, 2003 recommended changes to the proposed rules, the EQB staff changed the rule governing notice of a certificate of need application or a transmission planning report to rely on Public Utilities Commission ("PUC") Rules. This change was made in response to concerns raised by several parties that applicants should not be subject to different notice requirements for the same project before the PUC and EQB. MCEA agrees that consistent notice requirements streamline the process and are generally preferable.

The PUC rules regarding notice for a certificate of need application upon which the EQB staff rely, however, are not yet final.² It is possible that there may be a period of time, after the effective date of the EQB rules and before the effective date of the amended PUC rules when there are inadequate notice requirements. As stated by PUC staff at the September 4, 2003 hearing, it is likely that any such gap in the rules would be of limited duration and it is unclear

¹ The Staff recommendations for changes are found in Exhibit 50 in this docket.

² The PUC has received preliminary comments on the proposed changes to Minn. Rules Chapter 7849 and intends to publish a notice of intent to adopt the amendments in the near future.

whether any projects would be affected by such a gap. Regardless of the duration of the gap in the rules, however, MCEA is uncomfortable relying on PUC rules that are in the process of amendment and where the final form of the rules is uncertain.

To address the gap in the rules MCEA recommends including language in the rules that establishes a minimum notice requirement that must be met, regardless of the PUC notice requirements. The following proposed language establishes such a minimum notice requirement using language similar to that found in the PUC rules governing notice of transmission planning reports found at Minn. Rules 7848.1900 subp. 3.

4410.7030 PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1. **Notice to interested persons.** Upon receipt of an application for a certificate of need or receipt of a transmission planning report seeing certification of a high voltage transmission line, the Environmental Quality Board shall provide notice to interested persons of the pending project. Notice must be mailed to the following persons:

...

D. Those persons ~~known to the EQB to own property or reside in the area of the proposed project who are required to be given notice of the certificate of need application or the transmission projects report under rules of the Public Utilities Commission.~~ ;

II. Clarification of Standard for Including Impacts and Alternatives in the Environmental Report.

In its August 25, 2003 recommendations for changes to the proposed rules, the EQB staff amended the standard for determining whether to include a particular alternative in the environmental report. In its explanation of the recommended changes, the staff states that the new language is intended to rely on provisions in 4410.2300, items G and H, as was suggested by MCEA and the Department of Commerce.³

MCEA recommended striking the existing standard, which required the Chair to determine whether the proposed impact or alternative would assist the PUC in making its determination, and adding language from the rules implementing the Minnesota Environmental Policy Act.⁴ While EQB staff incorporated a standard similar to the provision of 4410.2300, the staff failed to remove the existing standard from the proposed rules, thereby creating two distinct standards for including alternatives in the environmental report. It appears that the failure to remove the existing standard is a simple drafting error. MCEA recommends adopting EQB staff's recommended new language and striking the existing standard.

4410.7030 PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT

Subp. 6. **Alternatives and impacts.** A person desiring that a particular alternative to the proposed project or a possible adverse impact to the project be considered in the environmental report shall identify the alternative or impact to be included, provide an explanation of why the alternative or impact should be included in the environmental

³ The staff explanations of recommended changes are found in Exhibit 51 of this docket.

⁴ MCEA comments are found in Exhibit 28 of this docket.

report, and submit all supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that is filed. ~~The chair shall include the alternative or impact in the environmental report only if the chair determines that the evaluation will assist the PUC in its decision on the certificate of need application or HVTL certification request.~~ The chair shall include in the environmental report any alternative or impact identified by the PUC for inclusion. The chair may exclude from analysis any alternative that does not meet the underlying need for or purpose of the project or that is not likely to have any significant environmental benefit compared to the project as proposed, or that another alternative that will be analyzed is likely to have similar environmental benefits with substantially less adverse economic, employment, or sociological impacts than the suggested alternative.

CONCLUSION

The recommendations contained in these comments are intended to protect public participation in the certificate of need process and ensure the adequacy of environmental review. MCEA respectfully requests that these comments be incorporated into the final amendments to the Minnesota Rules Chapters 4400 and 4410.

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